



INTERNAL OPERATING PRACTICES AND PROCEDURES

FOURTH APPELLATE DISTRICT, DIVISION ONE

I. INTRODUCTION

This document describes the internal operating practices and procedures of the Court of Appeal for the Fourth Appellate District, Division One, for review of appeals and original proceedings.

II. THE COURT

The Court of Appeal for the Fourth Appellate District consists of three divisions. Division One, covering cases arising in San Diego and Imperial Counties, is located in San Diego with eight justices, one of whom is the Presiding Justice. (Gov. Code, § 69104.) Divisions Two, covering cases from Riverside, San Bernardino and Inyo Counties, and Three, covering Orange County, are located in San Bernardino and Santa Ana respectively.

III. PROFESSIONAL STAFF

Each justice has two staff attorneys to assist him or her in the chambers work. In addition, there is a Central Staff, which consists of a Principal Attorney II, a Principal Attorney I (writ attorney), and staff attorneys who assist the court in processing

petitions for writs, staff-processed appeals, record review in criminal cases as mandated by People v. Wende (1979) 25 Cal.3d 436, and motions. Periodically attorneys from Central Staff work in chambers on a rotating basis to assist with civil appeals. One central staff attorney handles cases in which bankruptcy has been filed by one of the parties.

Support staff includes a librarian and assistant, a computer operation systems administrator and assistant, a management analyst, and chambers and judicial secretaries.

IV. CLERK'S OFFICE

The Clerk's Office consists of the Clerk of the Court, who oversees the entire district and is currently located in Division One, a Chief Deputy Clerk, deputies, and an office assistant. Each deputy has a specific duty: overseeing the calendar, processing notices of appeal, accepting filings, and working with the files, mail, and records. Certain deputies are designated "terminal digit deputies" (terminal digit is the last number in the six-digit appellate case "D" number) and process all filings on cases assigned to them from the time the notice of appeal is filed until the matter is final except for the calendaring process. Practitioners should ask to speak with the appropriate terminal digit deputy for information or assistance on a case or the calendaring deputy if the case has been placed on calendar. The office assistant is the receptionist. The court also has a security guard physically located in the Clerk's Office.

V. ORIGINAL PROCEEDINGS

The Clerk's Office forwards all writ petitions to the writ attorney. The writ attorney reviews each petition as it comes into the writ department to determine its urgency. If it appears an immediate stay or other form of urgent action is required, the attorney orally presents the petition to the writ panel, a panel of three justices which rotates on a monthly basis.

Absent unusual urgency, petitions are processed in order of their filing with adjustments for impending hearing or trial dates in particular cases. The writ attorney or central staff attorney assigned to the writ department normally reviews the petition without waiting for a response (but may solicit a response if desired), prepares a written memorandum evaluating the petition, and circulates it to the writ panel.

After the memorandum circulates, the panel may alternatively (1) request a response, (2) deny the petition regardless of whether a response has been requested or filed, (3) issue a peremptory writ in the first instance without oral argument, but only when a response has been requested or filed, or (4) issue an alternative writ or order to show cause. It is the court's policy to request an initial response to the petition before issuing an alternative writ or order to show cause. If the panel issues an alternative writ or order to show cause, real party will be given an opportunity to file a formal response and the cause will be placed on calendar. The attorney who prepared the

written memorandum will ordinarily draft the writ opinion under the direction of the lead justice on the panel.

VI. APPEALS

A. Screening and Processing of Cases

In civil cases, a docketing statement is filed within 10 days after the filing of the notice of appeal. (Local Rule 9(d).) From the information on the docketing statement, the court determines whether there is any issue regarding jurisdiction or appealability, whether the case is entitled to priority, and whether there has been a previous writ or appeal in the same or a closely related matter.

When the respondent's brief is filed in a civil or criminal appeal, or the time stated in California Rules of Court, rule 17(b) has run, the case is screened and assigned to one of two procedural tracks for processing: the "staff-processed appeals" track and the "chambers" track.

Juvenile cases are handled separately since they are expedited under California Rules of Court, rule 39.2A.

B. Staff-Processed Appeals

If the appeal involves issues that can be resolved with little difficulty based upon well-established case law or by statute and there appears to be no likelihood of dispute as to how the law applies to the facts, the case will be handled as a staff-processed appeal. These cases are done chronologically and assigned randomly to an authoring justice who supervises the

preparation of an opinion. If the case is appropriate for staff processing and the proposed opinion accurately applies the law and correctly decides the case, the authoring justice reviews and edits the draft as needed. If argument has been waived, the authoring justice initials the draft opinion and circulates it, along with the entire appellate file, to the other justices on the panel in order of seniority. If the other justices approve and initial the proposed opinion, it will be filed. If oral argument has been requested, the proposed opinion is not circulated but instead is included in the justice's calendar book for the month of argument and handled along with all the other argued cases.

In Wende cases (People v. Wende, supra, 24 Cal.3d 436), where appellant's counsel is unable to find any reasonably arguable issues, counsel asks the court to review the entire record for error. After the Attorney General's Office acknowledges the case is a Wende, the defendant is given the opportunity to file a brief within 30 days. Once that brief is filed, or the time to file it has expired, the case is processed as any other staff-processed appeal. A Central Staff attorney reviews the record for error and prepares a proposed opinion which is delivered to the assigned lead justice and, if approved, circulated to the panel for signature and filing. If the defendant or the staff attorney discovers an issue requiring briefing, however, counsel for both parties are asked to file

they are to participate in advance of oral argument and confer on all cases argued immediately after argument.

In cases where oral argument has been waived, a proposed opinion is prepared and circulated in order of seniority to the other justices assigned to the panel for that case. If the other justices concur, the opinion will be filed without delay.

VII. ORAL ARGUMENT

Oral argument is generally held during the second week of the month. Specific cases will be calendared during other times when resolution of the matter is urgent or for other good cause. Argument is limited to no more than 15 minutes per side, unless the time is extended by advance written request and leave of court.

Those matters that are orally argued are generally submitted at the conclusion of counsel's arguments. If argument has been waived, the case will be submitted at the conclusion of the entire argument calendar. Submission of the case triggers the 90-day rule for the filing of the opinion. (Cal. Const., art. VI, § 19.)

VIII. SETTLEMENT CONFERENCES

The general information packet sent to parties at the commencement of the appeal includes guidelines for the settlement program and an appellate settlement request form. The program is voluntary and available at the request of both parties or, should there be more than two parties, at the request of any two

briefs and, as in any other appeal, may request oral argument. The case will then be argued with all the other cases for that particular monthly calendar.

C. Chambers Appeals

Other appeals are processed in the "chambers" track. The Principal Attorney estimates the amount of time it will take to prepare the case, assigning values between three (relatively little time) through eight (substantial amount of time) in an attempt to equalize the workloads of the individual chambers. Once weighted, the cases are randomly distributed to the justices unless the docketing statement reveals there has been a previous appeal or writ in the same or closely related matter, in which case an attempt is made to assign the case to the same authoring justice and possibly the same panel. The assignment calendar is issued two months before oral argument with each justice assigned to author, on average, a core of six appeals. Additional juvenile and criminal cases are added to each chambers calendar depending on the needs of the court. Up to three chambers in a given month may also be assigned additional civil cases to be prepared with the assistance of a specially assigned central staff attorney. Each chambers has its own internal procedure for assigning and preparing cases. The draft opinions of cases to be orally argued are placed in a calendar book, generally the first Wednesday of the month. The justices review all cases in which

opposing parties. The request for a settlement conference may be made as soon as the notice of appeal is filed and settlement proceedings may commence before briefing but, in any event, the request must be received no later than 30 days after the filing of the last brief. The request normally will not interrupt or extend the briefing schedule. The parties' request for a particular settlement justice will be considered by the Presiding Justice in selecting the settlement justice. Should settlement efforts prove unsuccessful, the settlement justice will be recused on the ensuing appeal. In such instances, all settlement papers are strictly confidential and are kept separate from the appellate record.

IX. EXTERN PROGRAM

The court offers an extern program for select law school students. Externs are selected by the individual justices with whom they then work for 20-40 hours per week during a school trimester. The program, including an orientation program and monthly group meetings, is administered by the principal attorney. If students participate as part of their school's extern program, they may earn course credit for their efforts.

X. MOTIONS

Motions in appellate cases, except for those requesting extensions of time, are held for opposition in accordance with California Rules of Court, rule 41(a) and Code of Civil Procedure section 1013, subdivision (a). Applications in routine matters

(see Cal. Rules of Court, rule 43) are presented to the Presiding or Acting Presiding Justice for a ruling. Applications in nonroutine matters such as a motion to dismiss an appeal are presented to a panel of the court for ruling. If a motion is complex, the justice may seek attorney assistance before ruling. Extensions of time are ruled on immediately. Motions in writ cases are not held for opposition absent a request by the parties.